

AMENDED IN ASSEMBLY MAY 9, 2006

AMENDED IN ASSEMBLY APRIL 25, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2340

Introduced by Assembly Member Harman

February 23, 2006

An act to add Section 4712 to the Probate Code, relating to health care decisions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2340, as amended, Harman. Health care decisions.

Existing law permits a person to authorize another to make certain decisions on his or her behalf pursuant to an advance health care directive or surrogate designation, as specified.

This bill would, if a person lacks capacity to make health care decisions or designate a surrogate, require a health care provider to use reasonable efforts to locate the person's advance health care directive or require the health care provider to use reasonable efforts, *as specified*, to contact a spouse or domestic partner to act as surrogate to make health care decisions for the person. This bill would require that health care provider, if the spouse or domestic partner was unable to act as surrogate, to contact other individuals, as specified, to act as surrogate to make health care decisions for the person. *This bill would prohibit a person from acting as surrogate if the competence or motives of that person are questionable.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4712 is added to the Probate Code, to
2 read:

3 4712. (a) If a patient lacks the capacity to make health care
4 decisions or designate a surrogate, a health care provider shall
5 use reasonable efforts to locate and follow an advance health care
6 directive as described in this part.

7 (b) If the health care provider is unable to locate an advance
8 health care directive and the patient does not have a guardian or
9 conservator authorized to make health care decisions for the
10 patient, the health care provider shall use reasonable efforts to
11 contact a person or persons to act as surrogate with preference
12 given in the following order:

13 (1) The spouse or domestic partner of the patient unless a
14 decree of marital dissolution, legal separation, or nullity has been
15 entered, a proceeding for marital dissolution, legal separation, or
16 nullity has been filed and not dismissed, or a Notice of
17 Termination of Domestic Partnership has been filed with the
18 Secretary of State.

19 (2) A person or persons in one or more of the following
20 categories without regard to the order listed:

- 21 (A) An adult child of the patient.
- 22 (B) A parent of the patient.
- 23 (C) An adult brother or sister of the patient.
- 24 (D) A grandparent of the patient.
- 25 (E) An adult grandchild of the patient.

26 (F) An adult relative or close friend of the patient. For
27 purposes of this paragraph, ~~“adult relative or close friend”~~ *“adult*
28 *relative”* means an adult other than a person previously specified
29 in this section who *is related to the patient*, has exhibited special
30 care and concern for the patient, is familiar with the health care
31 wishes or personal values of the patient, and is willing to serve as
32 a surrogate. *For purposes of this paragraph, “close friend”*
33 *means an adult who has a preexisting relationship with the*
34 *patient, has exhibited significant care and concern for the*
35 *patient, has maintained regular contact with the patient so as to*
36 *be familiar with the patient’s activities, health, and religious and*
37 *moral beliefs, and is willing to serve as surrogate.*

1 (c) If more than one person set forth in paragraph (2) of
2 subdivision (b) assumes authority to act as surrogate and the
3 surrogates inform the supervising health care provider that they
4 are unable to agree on a health care decision, the supervising
5 health care provider shall comply with the decision of the
6 surrogate or surrogates who are most qualified to make the health
7 care decision based on all of the following:

8 (1) The ability of the surrogate to make a decision as described
9 in Section 4714.

10 (2) The degree of regular contact between the surrogate and
11 the patient before and during the illness of the patient.

12 (3) The care and concern the surrogate demonstrated for the
13 patient.

14 (4) The extent the surrogate is familiar with the personal
15 values of the patient.

16 (5) The availability of the surrogate to visit the patient.

17 (6) The availability of the surrogate to engage in face-to-face
18 contact with the health care provider for the purpose of fully
19 participating in the health care decision making process.

20 (d) A health care provider shall communicate the desire of the
21 surrogate to assume authority as promptly as practicable to the
22 persons listed in subdivision (b).

23 (e) A health care provider may rely on a decision of a
24 surrogate pursuant to this section without obtaining judicial
25 approval.

26 (f) *A person shall not be selected as surrogate if the*
27 *competence or motives of the person are questionable.*

28 (g) *For purposes of subdivisions (a) and (b), a health care*
29 *provider shall be deemed to have made reasonable efforts if that*
30 *health care provider has complied with the provisions of*
31 *paragraphs (1), (2), and (3) of subdivision (a) of Section 4717.*
32 *The health care provider shall document in the patient's medical*
33 *record all efforts made to contact any agent, surrogate, or a*
34 *family member or other person the health care provider*
35 *reasonably believes has the authority to make health care*
36 *decisions on behalf of the patient.*